



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 9, 2001

Jay D. Gurmankin, Esq.  
BERMAN, GAUFIN, TOMSIC & SAVAGE  
50 South Main Street, Suite 1250  
Salt Lake City, Utah 84144

RE: MUR: 4621

Dear Mr. Gurmankin:

On January 3, 2001, the Federal Election Commission ("FEC" or "Commission") found that there is reason to believe that your clients, the Cook 2000 Re-election Committee and Camille Cook, as treasurer ("Committee"), violated 2 U.S.C. § 441b. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. This finding is in addition to the reason to believe finding made by the Commission on July 2, 1998 that your clients violated 2 U.S.C. § 434. A letter informing you of this finding, accompanied by a Factual and Legal Analysis, was sent to you on July 15, 1998.

You may submit any factual or legal materials that you believe are relevant to the Commission's finding of reason to believe that the Committee violated 2 U.S.C. § 441b. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this entire matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. Please note that this conciliation agreement encompasses provisions relating to both the 2 U.S.C. § 441b and § 434 reason to believe findings.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

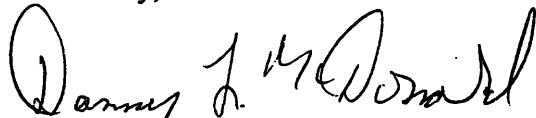
5822 504 405 2285

demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Marianne Abely, the attorney assigned to this matter, at (202) 694-1596.

Sincerely,

A handwritten signature in black ink, appearing to read "Danny L. McDonald". The signature is written in a cursive, flowing style.

Danny L. McDonald  
Chairman

Enclosures  
Factual and Legal Analysis  
Procedures  
Conciliation Agreement

21-04-405-2286

## FEDERAL ELECTION COMMISSION

### FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Cook 2000 Re-election Committee  
and Camille Cook, as treasurer<sup>1</sup>

MUR: 4621

#### I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Mike Zuhl, as chairman of the Utah State Democratic Committee, *see* 2 U.S.C. § 437g(a)(1), and on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

#### II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits any corporation from making any expenditure or contribution, directly or indirectly, in connection with a Federal election, and prohibits their officers and/or directors from consenting to such activities. The statute also prohibits any political committee from knowingly accepting such prohibited contributions. 2 U.S.C. § 441b.

According to the Commission's regulations, corporate employees are entitled to volunteer for the campaign and even, within certain limits, perform some limited services on company time and on company property. For example, employees of a corporation

---

<sup>1</sup> In March of 1997, Cook for Congress, Merrill A. Cook's principal campaign committee, notified the Federal Election Commission ("Commission") via the filing of an amendment to its Statement of Organization that it had changed its name to the Cook 98 Re-election Committee. In March of 1999, the Committee filed an amendment to its Statement of Organization notifying the Commission that it had changed its name from the Cook 98 Re-election Committee to the Cook 2000 Re-election Committee. Notice was received in June of 1999 that Camille Cook was replacing Avis Lewis as the Committee's treasurer.

21-04-405-2287

may make occasional, isolated, or incidental use of corporate facilities, which generally means activity that does not exceed one hour per week or four hours per month and which does not interfere with the organization's normal activities. Such employees are required to reimburse the corporation only to the extent that their activities increase the overhead or operating costs of the corporation. 11 C.F.R. § 114.9(a)(1). When an individual goes beyond "incidental use" of corporate facilities to benefit a candidate or political committee, that employee is required to reimburse the corporation for the use of those facilities at the normal and reasonable rental rate. Such reimbursements must be made within a commercially reasonable time. These categories of payments are considered in-kind contributions and as such must be reported by the benefiting campaign committee in its periodic disclosure filings. 11 C.F.R. §§ 114.9(a)(2) and 104.13.

Avis Lewis, who served as the treasurer for the respondent Committee in 1996, has been an employee of Cook Associates, Inc. since the mid-1980's. The Cook Slurry Company is the name under which Cook Associates, Inc. does business.<sup>2</sup> During the relevant time period, Ms. Lewis' position at the company was that of secretary and office bookkeeper. Ms. Lewis testified in a deposition taken in a civil suit filed by the R.T. Nielson Company against the Committee, that she performed her duties as treasurer on company time, while on company premises, utilizing company resources, including Cook Slurry ledgers and other accounting materials.<sup>3</sup> (Lewis dep. at Vol. I, pgs 28-30) Mr. Cook, who up until at least the end of the summer was campaigning out of the corporate

<sup>2</sup> According to Dun & Bradstreet, Inc., Cook Associates, Inc. was started in 1973 and 100% of its capital stock is owned by Merrill A. Cook. Avis Lewis serves as corporate secretary. *See also*, Jennifer K. Nii, *Salaries are Relative*, Deseret News, 9/19/99, at A01, 1999 WL 26533743. Mr. Cook served as President of the company from its inception until he was sworn into Congress in January of 1997. Cook dep. at Vol. I, pgs 5 & 6.

<sup>3</sup> The deposition transcripts of Merrill A. Cook, Avis Lewis and Ron Nielson, which were taken as part of the civil suit referenced above, were reviewed as a part of the investigation of this matter.

2025-04-12 10:50:22

21-04-105-2289  
6322-504-40-12

office, has testified that he was aware that Ms. Lewis was performing her duties as treasurer from the Cook Slurry headquarters. He testified that, while at work, she engaged in such campaign related activities as maintaining records, handling campaign accounts and making payments to vendors. The treasurer herself admitted that she spent an average of one or two days a week on her Committee responsibilities, which far exceeded the 1 hour per week, 4 hours per month limitation allowed by the regulations. (Lewis dep. at Vol. I, pges 28-30; Cook dep. at Vol. I, pges 30, 72, 75, 124; Vol. II, pges 246-248) The evidence demonstrates that Avis Lewis' use of company facilities and resources in performing her treasurer duties for the campaign went well beyond the "incidental use" allowed by the regulations. There was additional testimony that another Cook Slurry employee, Brett Jackman, on the instructions of Merrill A. Cook, set up, took down, transported and stored campaign signs. According to the evidence, these signs eventually ended up at a company owned plant located in Lehi, Utah. Mr. Jackman, who was not a volunteer, performed these services on company time utilizing company assets, including a Cook Slurry truck. (Nielson dep. at Vol II, pges 45-50; Lewis dep. at Vol. II, 268-272) Given the positions held by Merrill A. Cook and Avis Lewis in both the corporate organization and in the campaign, it can not be said that the Committee was unaware that these specific resources of Cook Associates, Inc. were being used to benefit Mr. Cook's candidacy for federal office. There are no indications in any of the Committee's disclosure reports that Cook Associates, Inc. was reimbursed for Ms. Lewis' time or for the use of any equipment or materials used by Ms. Lewis or Mr. Jackman.

Also, there are no indications in the record that Mr. Jackman was ever paid by the Committee for the work he performed on behalf of the campaign.<sup>4</sup>

Therefore, there is reason to believe that the Cook 2000 Re-election Committee and Camille Cook, as treasurer, violated 2 U.S.C. § 441b.

<sup>4</sup> Merrill A. Cook testified that a man named "Rousey" and another unnamed man were paid to put up and take down campaign signs. (Cook depo at Vol. III pge 479) It is unlikely that this other man was Jackman as the testimony indicates that Jackman performed his duties around the time of the primary in June, while Rousey's involvement was apparently during the general election time frame. A man named "Rousay" is listed in the 1996 12 Day Pre-Election and 1996 30 Day Post-General reports as having been paid for such work.

21.04.405.2290